

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

MASON COUNTY ROAD COMMISSION,
Public Employer-Respondent,

Case No. C09 C-033

-and-

GREGORY COLLINS,
An Individual-Charging Party.

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APPEARANCES:

Gregory Collins, *In Propria Persona*

DECISION AND ORDER

On March 24, 2009, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that the charge filed by Charging Party, Gregory Collins, against Respondent, Mason County Road Commission (Employer) failed to state a claim upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. Specifically, the charge alleged a violation based on the Americans with Disabilities Act (ADA) stemming from the Employer's failure to comply with various work restrictions outlined by Charging Party's medical doctor. Concluding that the allegations did not indicate any employer discrimination or misconduct due to anti-union animus, the ALJ recommended dismissal of the charge. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. Charging Party filed exceptions on April 1, 2009, to which Respondent did not file a response.

In his exceptions, Charging Party requests a formal hearing on his charge against the Employer. He substantiates this request with copies of work restrictions and medical reports issued by his medical doctor, as well as a copy of a grievance he requested that his union file against the Employer for ignoring the work restrictions. After carefully reviewing the exceptions, we find them to be without merit.

Discussions and Conclusions of Law

It is well established that PERA does not prohibit all types of discrimination or unfair treatment by a public employer. *Detroit Pub Sch*, 22 MPER 16 (2009). Absent a factually supported allegation that Respondent was motivated to discriminate against Charging Party due to union or other activity protected by Section 9 of PERA, the Commission is foreclosed from making a judgment on the merits or fairness of Employer's actions. *Id.* Here, Charging Party alleges wrongdoing by the Employer based on the ADA and disability reports from his doctor, rather than pursuant to any PERA violation. However, this commission lacks jurisdiction to address allegations involving the ADA. *Health Source Saginaw*, 1999 MERC Lab Op 379, 381 (no exceptions); *Muskegon Hts Pub Sch Dist*, 1993 MERC Lab Op 654, 657. Since the charge fails to state a claim under PERA, it is subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165. Accordingly, we agree with the ALJ's findings of fact and conclusions of law that the charge must be dismissed for failure to state a claim upon which relief can be granted under PERA.

ORDER

This unfair practice labor charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

MASON COUNTY ROAD COMMISSION,
Public Employer-Respondent,

Case No. C09 C-033

-and-

GREGORY COLLINS,
An Individual Charging Party.

APPEARANCES:

Gregory Collins, Charging Party, appearing on his own behalf

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, this case was assigned to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

Gregory Collins filed a charge on March 10, 2009 against the Mason County Road Commission, which in its entirety asserted:

American Disability Act, not following my Doctor's orders.

Collins has previously filed multiple charges against the Mason County Road Commission, which were dismissed. See, Case No. C06 B-033 & No. C07 L-280. Collins was expressly cautioned by the Administrative Law Judge, in Case No. C06 B-033, regarding the minimum pleading requirements of the Commission's Rules.

Discussion and Conclusions of Law:

The charge as filed fails to assert any claim under the Public Employment Relations Act. To the contrary, it affirmatively asserts a statutory claim over which the Commission has no jurisdiction. Collins is aware of the minimum pleading requirements and has chosen to not comply with those requirements. Absent even an allegation that an employer engaged in discriminatory or retaliatory conduct and was motivated by animus as a result of union or other activity protected by Section 9 of PERA, the Commission does not have jurisdiction to take evidence or to make a judgment on the merits or fairness of the actions complained of by the Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation that an employer took any discriminatory or retaliatory action or was motivated by union activity or other activity protected by PERA, the charge against the Mason County Road Commission fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____